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November 10, 1993

BY HAND DELIVERY

Hon. James H. Quello, Chairman
Federal Communications Commission
1919 M Street N.W. - Room 802
Washington, D. C. 20554

Hon. Ervin S. Duggan
Commissioner
Federal Communications Commission
1919 M Street N.W. - Room 832
Washington, D. C. 20554

Hon. Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street N.W. - Room 844
Washington, D. C. 20554

**Re: Rate Freeze For Small Cable Systems
MM Docket No. 92-266**

Dear Chairman Quello and Commissioners Duggan and Barrett:

This letter is written on behalf of the Coalition of Small System Operators. The Coalition consists of approximately 25 small cable system operators which operate about 25 percent of the cable headends in the country. The vast majority of the Coalition's systems serve less than 1,000 subscribers, and these systems average about 337 subscribers. The Coalition urges that the Commission not extend further an absolute rate freeze on cable systems of less than 1,000 subscribers.

The special problems faced by small cable operators are well known to the Commission. The members of the Coalition and other small operators

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typically have higher than average plant costs per subscriber because the cost of the headend and distribution plant cannot be spread among as many subscribers. They have higher programming costs, because they are typically not large enough to enjoy volume discounts. They typically have a higher cost of money. And most important, typically they do not have the other revenue streams -- advertising, pay-per-view, or other enhanced services -- that can help to make up revenue shortfalls in regulated services. In the proceedings before the Commission in implementing the 1992 Cable Act, the Coalition has built a record establishing the need for special consideration for small systems. 1/

Since small operators last increased rates, their costs have continued to rise dramatically. Their typically small margins have been squeezed even tighter, and there have been few other revenue sources or even financing available to bail them out. Notably, it is the operators who last raised rates well before the freeze who most feel the pinch. Many Coalition members chose not to raise rates in the period before regulation and have not had increases for well over a year.

We respectfully request that if the Commission chooses to extend the freeze, it permit small systems at least to increase rates in an amount sufficient to cover the increase in the GNP-PI, as well as to pass through actual cost increases for external factors -- programming costs, franchise fees, pole attachment costs, and costs of meeting the 1992 Cable Act's signal carriage requirements. 2/ The systems should be permitted to increase rates to reflect increases in these costs since either September 30, 1992, or the system's last rate increase, whichever came last. The Commission may require that any rate increases for small systems be subject to an "accounting order," requiring the systems to keep detailed records that would permit eventual refunds if later ordered.

1/ See, e.g., the following Coalition filings in MM Docket No. 92-266: Comments filed August 31, 1993; Comments filed January 27, 1993; Petition for Stay, July 28, 1993.

2/ The costs to meet must carry requirements have been extraordinary for many small systems. See Coalition Comments filed in MM Docket No. 92-266 on August 31, 1993, at 13-16.

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Small system operators are simply not in a position where they can tolerate any flat extension of the freeze. The danger of a continued freeze to them is great, as supported amply in the current record before the Commission. And there is no mechanism for them to make up critical lost revenues in the future. The danger to subscribers, on the other hand, is little. At worst, they could be made whole by later refunds.

We also suggest that extending the freeze for small systems would be unlawful. There is no record basis for extending the freeze to small operators. Nor has there been notice or full opportunity to comment. The Commission's rules themselves contemplate that any "suspension" of rate increases will be of a duration not to exceed 180 days. 47 C.F.R. § 76.933. Rate increases delayed eventually become rate increases denied, and a freeze of the total length now contemplated by the Commission would violate the takings clause of the 5th Amendment. See, e.g., AT&T v. FCC, 487 F.2d 864 (2d Cir. 1973).

For all these reasons, we respectfully request the Commission not to extend the freeze for small systems. Cable systems with less than 1,000 subscribers per franchise area should be allowed to increase their rates, 3/

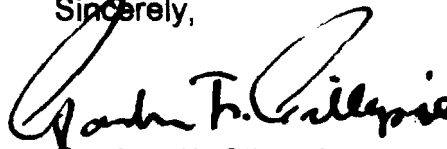
3/ The Commission should define a "small system" for these purposes as one that serves less than 1,000 subscribers per franchise area. The burdens and costs of being small are largely related to the size of the system in a franchise area. And the FCC should not give any disincentive to small systems to continue wherever possible to improve service through interconnection. See the Coalition Comments in MM Docket No. 92-266, filed August 31, 1993.

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subject to later refund, to reflect inflation and external cost increases since September 30, 1992, or the system's last rate increase, whichever is more recent.

Sincerely,



Gardner F. Gillespie

cc: Brian F. Fontes
Maureen O'Connell
John C. Hollar
Lisa Smith